

# Investigatory Independence in Child Sexual Abuse Evaluations: Conceptual Considerations

Sue White, PhD; and Kathleen M. Quinn, MD

The procedures used by investigators of sexual abuse allegations have recently come under increasing scrutiny. In this article the importance of investigatory independence is discussed. Conceptual aspects of problematic interviewing techniques that may compromise the investigation of sexual abuse complaints are reviewed. Recommendations are made for the analysis of evaluations relative to the degree of contamination that has been introduced into these assessments.

The techniques used in the investigation of child sexual abuse allegations are now, more frequently than in the past, being scrutinized by the legal system as well as by the general public. This increased scrutiny has brought about some charges that children's information has become contaminated, that is, distorted or falsified by factors that have confounded the source of the child's memory of the events supporting the allegation. The purpose of this article is to present the conceptual issue of *investigatory inde-*

*pendence* and to describe how particular interviewing techniques may compromise investigatory independence and lead to contamination of a child's information.

## Investigatory Independence

Investigatory independence must be maintained both externally and internally through all phases of an evaluation of suspected abuse. *External independence* requires that an interviewer maintain "an objective stance of not allying himself/herself with any particular individual involved in the investigation of the allegation."<sup>1</sup> Practically, this requires the evaluator to deal equally with all involved parties. Such an independent stance should establish an atmosphere in which the investigator is then able to pursue an assessment of the allegations that results in minimal contamination from sources outside of the interview. Failure to maintain external independ-

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Dr. White is Assistant Professor of Psychology and Dr. Quinn is Assistant Professor of Psychiatry, Department of Psychiatry, Case Western Reserve University School of Medicine. Both are on the staff at Cleveland Metropolitan General Hospital. Address reprint requests to Dr. White at Cleveland Metropolitan General Hospital, Child Psychiatry, 3395 Scranton Rd., Cleveland, OH 44109.

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ence may allow for an alliance between the evaluator and one party, resulting in a skewed or inadequate evaluation that is more susceptible to charges of actual as well as perceived contamination.

A second form of investigatory independence is that of *internal independence*, that is, "the evaluator's internal ability not to be biased relative to the allegations."<sup>1</sup> Lack of internal independence is exhibited in two major categories: (1) the verbal content of the interview and (2) the interviewer's behavioral influences. In the first case, the actual verbal information and how it is used by the interviewer to interact with the child may influence the outcome of the assessment. For instance, interviewers may enter the evaluation with information about the allegation, although this information need not automatically compromise independence. If, however, assumed facts are introduced into the interview by the evaluator, internal independence has been lost. As an example of the second category of influences affecting internal independence, that of the interviewer's behaviors, the interviewer may stroke the child as a reinforcement for an answer that confirms the interviewer's assumptions about the allegations.

### Pursuit of an Agenda

All interviewers approach an investigation of child sexual abuse with some assumptions about the veracity of the allegations. The collection of assumptions that the investigator attempts to have the child describe, confirm, or verify constitutes an *agenda*. Agendas may

be specific or general. The degree to which an agenda is pursued varies greatly, and pursuit of an agenda may or may not be intentional. The assumptions supporting an agenda may include a general belief that all children referred for an abuse investigation have indeed been abused, or the opposite, that they have not and that therefore the allegations must be false. Various possibilities exist between these two extremes, including the most neutral position of the assumption of a null set of hypotheses concerning the allegations. In its purest form, this neutral, or independent, position would allow the interviewer to approach an investigation with no assumptions about the veracity of the allegations and would demonstrate an agenda least likely to contaminate the data.

On either side of the neutral position are those agendas that are not independent of extraneous sources of influence and thus are more likely to introduce problematic interviewing techniques that will lead to contaminated information. A common agenda occurs when an interviewer attempts to verify specific details of an allegation as given to him/her by sources other than the child (e.g., parental report).

The problematic interviewing techniques supporting an agenda may result in false-positive or false-negative assessments of the allegation or in a failure to substantiate a conclusion concerning any particular allegation. Each of these results may have serious consequences. A false-positive finding may result in severe family disruptions, in the case

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being inappropriately pursued in the judicial system, and/or in an incorrect conviction of an innocent person. A false-negative finding may result in an end to the investigation and in possible continuing abuse of the child. The unsubstantiated case often remains in limbo.<sup>2</sup>

It is the pursuit of an agenda through the use of inappropriate techniques in an interview that will be discussed here as problematic and that increases the probability of contaminated data. Specific concepts to be addressed are leading questions (including disconfirmation techniques) and coercion.

### **Leading**

In legal terms, leading is used to refer to a question in which the answer is expected to be the information introduced in the question. According to Black's Law Dictionary, a leading question or statement is "one which instructs the witness how to answer or puts into his mouth words to be echoed back."<sup>3</sup> Less directive is the suggestive question, that is, the "presentation of an idea especially indirectly as through association of ideas, bringing before the mind for consideration in the nature of a hint."<sup>4</sup> The example, "Your daddy did put his finger in your vagina, didn't he?" should be considered leading, but a question such as, "Did your daddy put his finger in your vagina?" should be classified as suggestive.

For those interviewing children in investigatory circumstances, a conservative approach is proposed concerning leading and suggestive interrogations.

*Leading* should be considered to have occurred when the interviewer introduces any material that the child has *not* previously revealed to that interviewer. The source of the introduced material may be external to the interviewer (i.e., part of the allegation known to the interviewer) or internal (i.e., biases of the interviewer), but the information in question has not been introduced by the child to the interviewer. Leading and suggestive questioning is permitted in certain legal situations, such as direct or cross-examination of a child witness. It is recommended, however, that persons evaluating children avoid using either leading or suggestive interview techniques until data are available to clarify the effect of such questions on the issue of contamination. An interviewer may lead or provide leading material to a child in numerous ways.

**"Yes-No" Questions** In a child's daily life, yes-no questions are posed when either an affirmation or a negation of the leading information is expected. For example, upon arriving home from school, a parent may ask, "You did have milk today for lunch, didn't you?" This question implies that the child was expected to have had milk. The reasoning behind a child's "yes" answer may be (1) to tell the truth, (2) to please the parent, and/or (3) to avoid punishment for not having had milk. In an investigatory interview, the information being posed in the yes-no question may be based on prior knowledge of the interviewer, on prior introduction of data by the child, or on a hypothesis by the interviewer. In any case, the child is expected to reply

with either a "yes" or a "no." Those faced with interviewing a child who is reluctant to talk are likely to want to use such a technique. It should be noted, however, that the introduction of a yes-no format may lead to a number of possible responses by the child, most of which may be considered to be detrimental to the overall evaluation.

The first category includes the child's lack of any response, leaving some interviewers to make some assumptions about why the child was silent. Some interviewers confuse the lack of response with an assumed yes or no answer on the part of the child. For example, an interviewer may assume the child is too frightened from a threat by the perpetrator to give a response, when in fact the child is scared of the interviewer. Without actual responses from the child, however, any conclusion is improper.

A second possible general response to a yes-no question is either an affirmation or a negation on the part of the child. The child's answer may be in response to all, some, or none of the leading material. If the interviewer then takes the child's response as support for the introduced information, a compounding of the problem occurs.

A third type of response is likewise a child's affirmation or negation of a yes-no question, but with additional details being spontaneously provided. Again, the child's yes or no answer may be in response to all, some, or none of the leading material. The interviewer must be aware that the child's yes or no may not necessarily reflect the child's actual experiences. The subsequent sponta-

neous information must be evaluated separately. Although the initial error of introducing outside information should be considered problematic, the interviewer may further compound the problem if he/she does not utilize nonleading techniques to elucidate further the additional information given by the child.

It can be argued that a child being exposed to a yes-no question may be listening and assimilating the information being provided by the interviewer. The child may incorporate this information into a subsequent statement concerning the allegation. Tracing the path of such information from the interviewer through the child's memory and assessing the validity of the information produced by the child may then become very difficult.

**Multiple Choice** In a multiple-choice leading question or statement, multiple items are presented that may or may not contain at least one item consistent with the interviewer's agenda to find support for the allegation. The other possible choices may not necessarily have significance for the child. The child is expected to select the answer consistent with the interviewer's agenda. In this form of questioning, the child may affirm items pertaining to the particular allegation. The child's responses may be either true, partially true, or false. For example, the child is asked by the interviewer, "Has anyone ever touched you?" to which the child responds, "Yes." The interviewer then introduces the multiple choice question, "Was it Larry, Bob, or Doug?" The child replies, "Doug." The interviewer then

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assumes this identification to be correct without evaluating possible explanations as to why the child named that individual. The possibility that the information given in the multiple choice question/statement may have some relevance to the child's life, but not necessarily to the allegation, must be considered. Additionally, the possibility must be considered that a child's response to a multiple choice question may be a function of the ordinal position of the choices.

**Disconfirmation** Disconfirmation is a technique frequently used by adults to influence children's decisions. For example, a mother may ask, "What do you want to eat?" to which the child responds, "Candy." Dissatisfied with that answer, she then disconfirms the child's answer by saying, "You don't want candy. How about some soup?" In an investigatory interview, disconfirmation is the interviewer's refusal to accept a child's answer and the introduction of techniques to lead the child away from his/her own answer. Examples of disconfirmation questions/statements include the following.

**Ignoring a Child's Answer** If adults do not like a child's answer, it is often ignored. For example, "Mary, do you want some milk?" her mother asks. Mary replies, "I want some pop." The mother then responds, "Here's your milk. Now drink it." In an investigatory interview, the interviewer may ask, "Has anyone touched your bottom?" to which the child responds, "My daddy." For various reasons (including the possibility of hygienic touching), the interviewer may choose to ignore the answer as ir-

relevant information. Disconfirmation takes place when this interviewer then asks, "Has anyone at school touched your bottom?"

**Leading Away from A Child's Answer** To the question, "Who touched your bottom?" the child may respond "My mommy." The interviewer may assume that the mother's touching was during hygienic care and therefore decide not to investigate further. In this category, the answer is acknowledged, but disconfirmed: "Yes, mommy does, but who else touched your bottom?" To this the child may respond, "My daddy." Again displeased with this answer, the interviewer leads away from the child's answers and introduces new information with, "Right, but didn't Uncle Joe touch your bottom?"

**Telling a Child He/She Is Incorrect** In everyday life children's answers are frequently disconfirmed as being incorrect. A mother asks, "Do you want cereal for breakfast?" The child replies, "No, I don't like cereal. I want a Pop-Tart." The mother decides that a Pop-Tart is not an option and says, "Oh, no, you really do like cereal. Here's your bowl."

In an investigatory interview, when asked, "Who did you go into the playhouse with?", the child may respond, "Georgie." Using information from the parent, the interviewer may avoid investigating the "Georgie" response, and state, "But your mother told me that you went with Paul." The child responds, "No, I didn't." In a disconfirmation effort to have Paul verified as the alleged perpetrator, the interviewer

then replies, "Oh, you know you did. Your mommy said so. Now when you went into the playhouse with Paul, what did he do to you to hurt you?" Only the child's assertiveness to correct this assumption will overcome this interviewer's agenda.

### **Coercion**

Parents frequently use coercive techniques in attempts to have their children conform to their expectations. For instance, a parent may have concerns about how a child is using lunch money and interrogate the child after school. The parent may ask, "John, did you buy a plate lunch today?" to which the child may respond, "Yes, Mom." Unsure if the child is really telling the truth, the parent may further question the child by asking, "Are you sure you bought a lunch today?" The repetitive nature of the question strongly suggests the parent's preferred behavior for the child. In interviewing suspected sexual abuse victims, such coercive techniques may compromise the evaluation because of their directive nature. The essence of this problematic interviewing technique is the manipulative or socially forceful imposition of the interviewer's beliefs on the child. Coercion is seen in several ways during investigatory interviews.

**Truth-Lie Paradigm** The interviewer's demand that the child "tell the truth" is a simple form of coercion and occurs when the interviewer provides a lesson in the general concept of truthfulness. The child is asked, "Now you know the difference between the truth and a lie. Tell me the truth about . . ."

Another form of the coercive truth-lie technique is observed when the interviewer discusses possible true and false statements with the child, such as, "If I say this dress is red, am I telling the truth?" Often the truth-lie technique is used when the interviewer is confusing assessment of the child's competency to be a witness with investigation of the allegation.<sup>5</sup>

A third coercive truth/lie method is used when the interviewer urges the child to tell the truth but does so in a gentle or pleading fashion. For instance, the interviewer may say to the child, "Now today, we're going to tell the truth, aren't we?"

A fourth and more forceful type of coercion is found when the interviewer disconfirms the child's answer and demands that the child tell the truth. This technique is often used when the child answers a question in a manner that does not verify the interviewer's agenda. The child may be coerced by, "Now, John. You know that isn't the truth. Tell me the truth about . . ."

Truth/lie paradigms such as those described here are not appropriate techniques in an investigatory interview inasmuch as they are open to the criticism that they distort the child's recollection. These paradigms potentially distort the child's data in several ways, including: labeling material as true or untrue when this function rests with the judicial system; increasing the demand for information from the child<sup>6</sup>; and signaling that the interviewer believes there exists a particular truth to be found.

**Tangible Rewards** While parents

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regularly use tangible rewards to shape their children's behaviors, such techniques should be avoided during investigatory interviews. Tangible rewards may include stickers, food and drink, playtime, or specific toys. While some children are regularly offered treats during evaluation sessions, it should be recognized that such techniques may be seen as attempts to bribe or coerce the child into giving information, even if the treat has not been given with such an intention.

**Repetitive Questioning** In situations where interviewers are vigorously attempting to confirm specific details, a child may be repetitively questioned about a specific area of content. Such repetitive questioning communicates to the child that he/she has been giving "incorrect" or "inadequate" answers and demands that the child supply the "correct" information. If particular details are included in the repetitive questioning, the child's subsequent responses must also be evaluated relative to the degree to which these repetitive details may have been incorporated into the child's subsequent statements.

**Threats** The most coercive interview technique is used when the evaluator demands that a child answer questions in accordance with the interviewer's agenda and enforces this demand with a threat. For instance, in the situation in which the child has been asked, "Who hurt you?" and has chosen not to answer, the child may ask to see his/her mother in the waiting room. The interviewer with a firm agenda to have the child disclose information may intro-

duce coercion by saying, "You can see your mother after you tell me who hurt you? Okay?" This coercive technique is extremely inappropriate.

**Limit Setting** The interviewer must recognize the difference between coercive acts designed to elicit details consistent with the interviewer's agenda and limit-setting techniques instituted by the interviewer to establish an environment in which the child feels more comfortable to reveal information. For example, a child may cry to go to the toilet. If the interviewer thinks that the child is crying just to leave the interview room, the interviewer should allow the child to go to the toilet if the request is made in a calm voice. The child's request should not be coercively used to get the child to reveal information about the allegations, as in, "You can go to the toilet when you tell me who touched your peepee." The first example illustrates the interviewer's communicating to the child that the adult is responsible for maintaining control of the session. The second one wrongly introduces coercion and may distort the child's data.

## **Assessing Independence**

The analysis of any allegation must include an assessment by the interviewer and possibly by others of the degree of independence exercised by the evaluator. Foremost among the factors to be assessed is the impact the interviewing techniques may have had on the child's statements. Other factors include the interactions of the interviewer with others before and after contacts with the child. A thorough review of all primary sources

documenting the child's initial complaints as well as any historical considerations (e.g., family history) is necessary. An in-depth psychosocial history concerning the child and family may demonstrate alternate explanations for the child's presenting behaviors and/or statements.<sup>1,7</sup> Primary sources include data recorded at the time of the interview, audiotapes, videotapes, and/or contemporaneous transcripts. Such document sources may allow for the evaluation of the original data as given by the child, of the interactions of the child and interviewer, and of any other influences on the reported data. In addition, secondary sources (reports of the interview sessions and other documents (e.g., family notes not recorded at the time of the interview) may be useful in assessing the degree of contamination. Comparing the primary sources with the secondary sources may allow the assessor to judge the degree and direction of the interviewer's agenda and resulting contamination. Aspects to be evaluated include how interviewing methods may have distorted the child's true data, allowed the child to incorporate data not originally introduced into the evaluation by the child, and/or concretized the child's information.

***Distortion of True Data*** One possible result of a lack of independence is the distortion of data that originally represented the child's actual experiences. The degree of such distortion is likely to be consistent with the degree of the interviewer's pursuit of an agenda to prove a specific allegation. For example, a child may have originally stated, "The

teacher took me and Mary to the bathroom to play with us." Although "play" does not usually have the same connotation as "touched," the interviewer may have elected not to have the child define his/her meaning of play and may have substituted the word "touch." The resulting comment back to the child may be, "So Ms. Kelly took you and Mary to the bathroom to touch you?" The child may then have responded by shaking her head affirmatively. Without further investigation, the interviewer's conclusion as reported in the final evaluation may then be, "The child told me that the teacher, Ms. Kelly, took the two children into the bathroom and touched their genitals." Thus the data became distorted by the interviewer's changing the verbal content of the child's statements, asking a yes-no question, and then presenting the conclusions as data given by the child.

***Incorporation of Data*** Another result of a lack of investigatory independence may be the child's inclusion of outside information into his/her memory that may or may not have been consistent with the child's own experiences. Incorporation may occur when a child is exposed to data originating from another source. For example, a child may have reported that Aunt Debbie had touched his penis. Using inappropriate interviewing techniques, the interviewer may have further questioned the child by saying, "Aunt Debbie touched you. Didn't Uncle Larry touch you also?" The child may then incorporate "Uncle Larry" in his memory as a name to give in future questioning on the same

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issue because he has always associated "Aunt Debbie" with "Uncle Larry." The problem now becomes whether "Uncle Larry" was an actual perpetrator or whether the name was only incorporated into the child's story after having been presented by the interviewer.

**Concretization** Repeatedly discussing or being exposed to repetitive leading discussions about an allegation may strongly encode, or concretize, the child's memory of the events.<sup>8-10</sup> If this encoding happens, the true sources of a child's memory of his/her experiences may become clouded. The child's later statements may actually arise from several memory sources, including his/her actual experiences, memory of his/her earlier statements, and/or the child's memory of other experiences of the allegations being presented (e.g., family or interviewer's statements, viewing of videotapes, exposure to media, grand jury testimony). Assessing the sources of memory may prove beyond the ability of the trier of fact.

## **Maintenance of Investigatory Independence**

Evaluators should regularly review their interviewing techniques in order to minimize contamination. Training and ongoing peer review of interview content and techniques should be sought on a regular basis. Optimally such reviews should include videotaped sessions. If videotaping is not possible, an audiotape can be reviewed by oneself and others. Although not as powerful as teachers, other methods include having an observer meticulously take notes during an

interview and/or doing so oneself. Regardless of this continuing training, all interviewers should review each interview with a suspected victim of abuse with regard to the investigator's techniques that may give rise to contamination.

## **Summary**

A conceptual framework with which to analyze the degree of contamination within investigations of child sexual abuse has been articulated above. The key issue is analysis of the degree of independence maintained by the evaluator. Both verbal and nonverbal techniques need to be considered as potentially problematic. Primary evaluators as well as other practitioners who must evaluate the data should examine the results of an evaluation with these issues in mind.

As research in the area of child interviewing has not addressed these specific issues as yet, the concepts presented here are a result of observed clinical interactions. Obtaining experimental data to delineate the effects of these postulated factors is very important, but such data will not be forthcoming for several years. In the meantime, the judicial system will continue to criticize the mental health professions for influencing children's data during investigatory interviews. Thus, until data are available that will support conclusions such as, "leading questions have no effect on a three-year-old's responses," practitioners will be wise to take a conservative approach and consider all ways in which they might be criticized for influencing a child's data.

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